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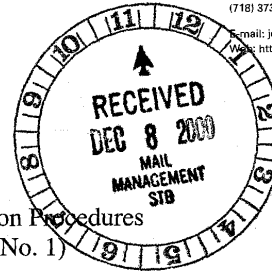
**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

November 27, 2000

Honorable Vernon A. Williams  
Office of the Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, D.C. 29423-0001

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Office of the Secretary  
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Re: Major Rail Consolidation Procedures  
Ex Parte No. 582 (Sub-No. 1)



JERROLD NADLER  
8TH DISTRICT, NEW YORK

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Dear Mr. Secretary:

The proposed rules are a major step in the right direction. As you know, I have emphasized the need to preserve system capacity and improve service whenever a major realignment of the rail system is being considered. I have also advocated taking a broad view of the map involved and making logical changes in any plan submitted. This may include incorporating even unwilling carriers, or track not owned by the applicants, into a transaction when this is the only realistic means of providing both efficient service and competition.

As the proposed rules do go a long way toward resolving my objections to the way prior mergers were reviewed, I have only a few suggestions for improvements:

1. The inclusion of lines owned by a non-applicant should be allowed, either on application by the applicant carriers, upon the Board's own motion, or upon application by any affected party, including a governmental or civic organization, for good cause shown. The current rules provide for the consideration of such a step only as a last resort. With the current situation of many short lines and public track owners holding portions of once major lines, the possibility that some of these assets may need to be incorporated in a Class I for the public good, with or without its current owner's approval, must be part of any consideration of a realignment of the national system.

2. The improvement of system capacity and efficiency should become the major goal of all activity by the Board, not just to maintain or improve competition, but to assure that the system can satisfy the needs of the public anywhere those needs exist or should exist. The applicant is required under these rules to submit a plan to improve its system, including a capital plan. I believe it is time for the public to become involved in approving this type of plan, and to determine what capital improvements may be required to achieve public goals, such as the removal of truck traffic from highways, particularly congested highways. A plan of capital improvements needed to achieve such goals,

including improvements the applicants cannot afford, should also be included in a major transaction submission. Essentially, this should be put forth by an applicant as an offer of service by the applicant to the public if the public will provide the resources. The public should also be allowed to submit such proposals in response to an application.

3. The problem of blocked grade crossings is related to the lack of system capacity. However, the burden of grade crossings should be lifted from the railroads. Should grade separation or grade crossing improvements be required to accommodate a road or highway which did not exist when the railway was built, the financial burden of creating any needed improvements should not be imposed upon the railroad. The applicant's responsibility in the application should be to identify crossings where a problem may or will be created, and to suggest a correction. The applicant should not be required to accomplish the correction unless the road predated the railway.

4. State imposed property taxes are a major disincentive to capital improvements on railway lines. Applicants should be relieved from the burden of making any capital improvements on rail assets (main lines, yards and terminals) which would subject the railroad to increased real estate or other local or state taxes.

5. In addition to Board review of an application, the Department of Defense should review such applications for their impact upon the nation's ability to supply its armed forces in any theater of operations. At the present time, the railway industry is barely able to provide needed services for the nation's economy. There is grave doubt that the nation could sustain a war of any duration because of the demonstrated limits of the rail system's capacity. Line abandonments or service discontinuances should now be severely restricted, and redundancy should be provided to all major points. Further, under no circumstances should the fact that service can be provided by another mode of transportation be considered in any application to reduce or terminate service on a line or to eliminate competitive rail service. Returning freight traffic to the rail system must become a primary goal of the Board. This appears to be the thrust of the proposed rules, but the requirement should be made explicit.

6. In addition to discouraging the complete abandonment of links in the Class I rail system, balkanization of former main lines must also be discouraged. If former main lines are to be made available to Class II or III operators, the entire line between major terminals should be part of the application unless the application is restricted to a grant of trackage rights to provide local service. It is essential that secondary main line capacity be maintained to accommodate increasing traffic, traffic surges and detours. This cannot be accomplished if the traffic structure is allowed to deteriorate or if ownership is split up among multiple carriers. Abandonment of economically isolated stretches of former main lines should be absolutely forbidden. Allocation of traffic between duplicate lines should be required. This would assure that both lines will be maintained and would reduce the burden imposed upon residential neighbors of the line favored for preservation by management.

While I am happy with the proposed rules, I note that there has been significant dissatisfaction in the industry. Indeed, the Burlington Northern-Santa Fe has determined that it will cease making significant capital improvements to its system and, in fact, will remove capital from its rail properties and operations because of the proposed imposition of these rules. The comments from the industry should be fully considered. There is a need to attract capital to this industry. If a system maintained for the public benefit and for the national defense cannot attract the capital needed to maintain its capacity to serve the public, we need to know exactly why. If adjustments which solve the problem of attracting sufficient capital while still achieving the public goals can be made to the rules, those adjustments should be made. If not, a serious question of public policy must be addressed. If there is a major issue with regard to the ability of private enterprise to maintain a transportation system adequate to meet all public needs, the Board should make a full report to Congress. The report should recommend steps the government can take to attract private investment to the rail industry and the necessary services and facilities which should be provided at public expense to achieve environmental or economic goals.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, reading "Jerrold Nadler". The signature is fluid and cursive, with the first name "Jerrold" and last name "Nadler" clearly distinguishable.

JERROLD NADLER  
Member of Congress

Cc: Hon. Charles Schumer  
Hon. Hillary Clinton  
Hon. Rodney Slater  
Hon. Jolene Molitoris  
Hon. Bud Shuster  
Hon. Don Young  
Hon. Jim Oberstar